



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases the information provided to applicants when granted or denied a license by the state, counties, and municipalities.

### B. EFFECT OF PROPOSED CHANGES:

#### “Licensing” by the State of Florida

Chapter 120, Florida Statutes, is the Administrative Procedure Act (APA). The APA applies to “agencies” which include the Governor,<sup>1</sup> state officers, state departments, departmental units,<sup>2</sup> authorities, regional water supply authorities, boards, commissions,<sup>3</sup> regional planning agencies, educational units, and other specified<sup>4</sup> entities.<sup>5</sup>

The APA defines the term “license” to include: a franchise, permit, certification, registration, charter, or similar form of authorization required by law.<sup>6</sup> This definition, however, excludes any license that is issued primarily for revenue purposes when issuance of the license is merely a ministerial act.<sup>7</sup> The APA has provisions which specifically relate to licensing and place certain requirements on agencies:

- Examine any application for a license upon receipt, notify the applicant of any apparent errors or omissions within 30 days, and request any additional information the agency required by law;<sup>8</sup>
- Consider an application complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired;<sup>9</sup>
- Approve or deny every application for a license within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law;<sup>10</sup>
- Notify any applicant seeking a license for an activity that is exempt from licensure and return any application fee within 30 days after receipt of the original application; and<sup>11</sup>

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<sup>1</sup> Fla. Stat. § 120.52(1)(a) (2005) (while the Governor is exercising all executive powers other than those derived from the Florida Constitution).

<sup>2</sup> Fla. Stat. § 120.52(1)(b)1. (2005) (as described in section 20.04, Florida Statutes).

<sup>3</sup> Fla. Stat. § 120.52(1)(b)4. (2005) (including the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature).

<sup>4</sup> Fla. Stat. § 120.52(1)(b)8. (2005) (This includes entities described in chapters 163 [Intergovernmental Programs], 373 [Water Resources], 380 [Land and Water Management], and 582 [Soil and Water Conservation Districts], Florida Statutes, and section 186.504 [Regional Planning Councils], Florida Statutes).

<sup>5</sup> Fla. Stat. § 120.52(1) (2005) (Agency does not include legal entities created pursuant to part II of chapter 361 [Joint Electric Power Supply Projects], metropolitan planning organizations, separate legal or administrative entities which include metropolitan planning organizations, expressway authorities, legal or administrative entities created pursuant to an interlocal agreement unless a party is otherwise subject to the APA.).

<sup>6</sup> Fla. Stat. § 120.52(9) (2005).

<sup>7</sup> *Id.*

<sup>8</sup> Fla. Stat. § 120.60(1) (2005) (An agency is prohibited from denying a license for failure to correct an error or omission to supply additional information if the agency does not notify the applicant of any errors or omissions and request additional information.).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* (Any application for a license that is not approved or denied within the 90-day or other shorter time period required by law, within 15 days after conclusion of a public hearing held on the application, or within 45 days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.).

<sup>11</sup> Fla. Stat. § 120.60(2) (2005).

- Provide written notice, either personally or by mail, that the agency intends to grant or deny an application for license and state with particularity the grounds or basis for the issuance or denial of the license.<sup>12</sup>

The licensing provisions of the APA also apply to licenses which do not automatically expire by statute;<sup>13</sup> the revocation, suspension, annulment, or withdrawal of licenses; and emergency suspensions, restrictions, or limitations of a license.

### Licensing by Counties and Municipalities

The APA applies to certain local government entities such as multicounty special districts with a majority of its governing board comprised of nonelected persons.<sup>14</sup> The APA also applies to counties and municipalities to the extent they are expressly made subject to this act by general or special law or existing judicial decisions.<sup>15</sup> Most licensing decisions of counties and municipalities have not, however, been made subject to the APA. As such, licensing by counties and municipalities is controlled by ordinances and not the licensing requirements of the APA.

### Additional Licensing Requirements for APA Agencies

This bill creates a new requirement for the written notice that agencies are required to give applicants when the agency intends to grant or deny, or has granted or denied, an application for licensure: the notice which states with particularity the grounds or basis for the issuance or denial of a license must also include a citation to the applicable rule.

### Additional Licensing Requirements for Counties and Municipalities

The bill creates certain licensing notification requirements for counties and municipalities: each applicant who applies to a county or municipality for a license must be given written notice either personally or by mail that the county or municipality intends to grant or deny the application. Similar to the APA licensing requirements, the bill requires this notice to state with particularity the grounds or basis, including a citation to the applicable ordinance, for the issuance or denial of the license.<sup>16</sup>

## C. SECTION DIRECTORY:

- Section 1: Amends subsection (3) of section 120.60, Florida Statutes, to require a citation to the applicable rule when giving notice of its decision to deny or issue a license.
- Section 2: Creating section 125.022, Florida Statutes, to require a county to give written notice of its intent to issue or deny a license.
- Section 3: Creating section 166.033, Florida Statutes, to require a municipality to give written notice of its intent to issue or deny a license.
- Section 4: Providing for the bill to take effect upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

<sup>12</sup> Fla. Stat. § 120.60(2) (2005) (This notice must further inform the applicant of the basis for the agency decision, of any administrative hearing or judicial review which may be available, of the procedure which must be followed, and of any applicable time limits.).

<sup>13</sup> Fla. Stat. § 120.60(3) (2005).

<sup>14</sup> Fla. Stat. § 120.52(1) (2005).

<sup>15</sup> Fla. Stat. § 120.52(1)(c) (2005).

<sup>16</sup> Fla. HB 1447, §§ 2 and 3 (2005) (License has the same meaning as in section 120.52, Florida Statutes.).

1. Revenues:

This bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

State agencies may need to update their rules and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

Counties and municipalities may need to update their ordinances and processes to comply with this bill. These costs are indeterminate, but are not expected to be significant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to reduce the percentage of a state tax shared with counties or municipalities. This bill does not appear to reduce the authority that counties or municipalities have to raise revenue. Although this bill is expected to require counties and municipalities to spend funds or to take an action requiring the expenditure of funds, these expenditures do not appear to be significant enough to trigger the constitutional provisions related to the mandated expenditure of funds.<sup>17</sup>

2. Other:

There do not appear to be any other constitutional issues.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create, modify, or eliminate rulemaking authority. Yet, the bill will likely require agencies to revise their current rules.

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<sup>17</sup> Section 18 of article VII of the Florida Constitution provides that counties and municipalities may not be bound by a general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds unless it fulfills an important state interest and one of five criteria is met: (1) funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; (2) the legislature authorizes or has authorized a county or municipality to enact a funding source not available for such county or municipality on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by a simple majority vote of the governing body of such county or municipality; (3) the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; (4) the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or (5) the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement, which federal requirement specifically contemplates actions by counties or municipalities for compliance.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

Not applicable.